84TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 2477

RELATING TO INTERCORPORATE RELATIONS BETWEEN THE GENERAL PUBLIC UTILITIES CORP. AND THE MANILA ELECTRIC CO.

JUNE 26, 1956.—Referred to the House Calendar and ordered to be printed

Mr. KLEIN, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H. R. 10624]

The Committee on Interstate and Foreign Commerce to whom was referred the bill (H. R. 10624) relating to intercorporate relations between the General Public Utilities Corp., a corporation organized and operating in the United States, and the Manila Electric Co., having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

1. PURPOSE OF THE BILL

The bill would permit the General Public Utilities Corp. to retain Manila Electric Co. as a subsidiary, despite the provisions of the Public Utility Holding Company Act of 1935.

2. BACKGROUND

The Public Utility Holding Company Act of 1935 required generally that a registered holding company should be limited in its operations to a single integrated system. Under certain instances outlined under section 11 (b) (1) of that act, the Securities and Exchange Commission might permit control of additional integrated systems. This exception, however, and the Senate report on the exception (No. 621, 74th Cong.) make it clear that the exception did not cover an instance permitting

control of an additional system in a noncontiguous foreign country.[1]

As General Public Utilities Corp. (successor to Associated Gas & Electric Co. and to Associated Gas & Electric Corp.), controls an integrated system in New Jersey and Pennsylvania, under the provisions of the Holding Company Act it cannot control the Manila Electric Co.[2]

The history of the posture in which GPU now finds itself with respect to the Philippine properties under the mandate of section 11 (b) (1) commenced in 1941. In that year, at a time when Associated Gas & Electric Corp. (Agecorp) and its parent, Associated Gas & Electric Co. (predecessors of GPU), were undergoing reorganization pursuant to chapter X of the Bankruptcy Act, the Securities and Exchange Commission instituted a proceeding directed to the then chapter X trustees of Agecorp in which it was alleged that the then holding company system held a large number of companies scattered throughout this country and in the Philippine Islands which were not retainable under the standards of section 11 (b) (1). After hearing, the Commission, on August 13, 1942, issued an order in which, among other things, the system was ordered to sever its relationship with a large number of companies, including the two public-utility companies operating in the Philippine Islands (*Denis J. Driscoll and Willard L. Thorp, etc.*, 11 S. E. C. 1115; 11 S. E. C. 1123).

Thereafter, on February 9, 1945, the two Philippine companies were removed from the list of companies required to be divested. The order of removal was entered upon the application of the trustees of Agecorp who stated that the properties of the two Philippine companies were then in the hands of the Japanese and that, after the Japanese had been driven out of the Philippine Islands, it would be necessary that substantial funds be expended to rehabilitate the properties; and that, while the Philippine companies did not have sufficient funds to undertake such a program on their own, their parent holding company, Associated Electric Co., an American company and a direct subsidiary of Agecorp, was in a position to advance very substantial sums to provide the necessary funds. Under these circumstances, the Commission removed the two Philippine companies from the list of companies required to be divested subject "to the condition that [the 1942] order directing the divestment of the Philippine properties [might] be reinstated upon notice and opportunity for hearing on the sole question of the appropriateness of the time of such reinstatement in relation to the status of the rehabilitation program." (*Denis J. Driscoll and Willard L. Thorp, etc.*, 18 S. E. C. 283.)

Subsequently, the Commission reconvened the proceeding and, after hearing, on December 28, 1951, reinstated the divestment order so far

[1] Sec. 11 (b) (1) reads as follows:

"* * * *Provided, however*, That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

"(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company or such system;

"(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

"(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation."

Whether or not GPU could meet the requirements of clauses (A) and (C) with regard to its Philippine properties, it concedes that it cannot meet clause (B) and that the Commission's divestment order is lawful.

[2] General Public Utilities has two subsidiaries in the Philippines; namely Manila Electric Co. and Escudero Electric Service Co. Inasmuch as General Public Utilities has applied to Philippine authorities for the merger of Escudero into Manila, the system in the Philippines is herein treated as one company.

as the Philippine properties were concerned (*General Public Utilities Corporation*, Holding Company Act Release No. 10982). Under the standards of section 11 (c) of the act, GPU was required to comply with the divestment order within 1 year from December 28, 1951.

3. HEARINGS

On February 24, 1955, there was introduced H. R. 4370, which proposed to amend section 11 (b) (1) of the act by adding a proviso thereto which would have the same effect as the present bill. Hearings were not had on that bill. H. R. 10624 was introduced on April 18, 1956. Two days of testimony were taken during which a subcommittee heard witnesses from the General Public Utilities Corp., interested stockholders of that corporation, and the Securities and Exchange Commission. The corporation sponsors the legislation, the Commission opposes it. Letters were received from the Department of State indicating that the bill was in furtherance of our foreign policy, from the International Cooperation Administration stating the bill was in line with the objectives of the Mutual Security Act, and from the Bureau of Budget stating that if the Congress decided as a matter of policy to enact the legislation, the Bureau had no objection. The committee is advised that the Philippine Government seeks the objective sought by the bill; namely, the retention in the United States of the control of Manila Electric.

A suggestion was made by the Securities and Exchange Commission that a new United States holding company might be created designed to hold the stock of the Manila Electric Co., and that the stock of the new holding company might be distributed to the stockholders of General Public Utilities. The Department of State has advised this committee that it has been informed that the Philippine Government has considered the desirability of the proposal made by the Securities and Exchange Commission, and that the Philippine Government has decided to reiterate its previous position favoring the continued ownership of the Manila Electric Co., by the General Public Utilities Corp.

The Department of State has advised this committee that the Philippine Government is believed to take the view that—

(1) A new holding company would not have sufficient financial credit of its own and consequently would be unable to provide financial assistance to the Manila Electric Co. for the expansion of the latter's productive facilities.

(2) The background, experience, and knowledge of the economic development program of the Philippines which has been fully supported by the present management of the General Public Utilities Corp. might be lost to the Philippines if a new management for the Manila Electric Co. were necessary.

(3) A new holding company might not have the required engineering and technical talent to assist the Manila Electric Co. in its expansion plans.

(4) The installation of a nuclear powerplant in the Philippines by the Manila Electric Co. might be foregone or delayed by many years if the stock of Manila Electric Co. were transferred to a new United States holding company.

90014°—57 H. Rept., 84-2, vol. 3——95

4. POSITION OF GENERAL PUBLIC UTILITIES

GPU has represented that it has attempted from time to time to sell its investment in the Philippine properties to potential investors both within and without the United States but that such attempts have not been successful. It has advised further that it does not believe a sale of the common stock of the two Philippine companies within the United States by means of an underwriting and public offering to be feasible in view of the large amount involved (estimated by GPU at from $30 million to $35 million) and the limited market for such a security. GPU's position is that neither a public offering of the common stock of the Philippine companies nor a direct distribution thereof in kind to the common stockholders of GPU would be in the best interests of the stockholders of GPU because they would each result in scatteration of such stock among many security holders in the United States, which in turn might result in control of the Philippine companies falling into the hands of persons interested only in exploiting the companies and not in maintaining their properties and rendering good electric service in the areas where they serve. Moreover, GPU states that either a public offering or distribution in kind would leave no single entity in the United States with any duty of protecting the interests of the American investors in the Philippine companies.

GPU has further advanced the position that the operations of the Manila company, its required expansion and its management, can best be aided by the continued managerial and financial assistance which GPU can render to it; that Manila, without GPU, does not have the credit rating or management to secure the additional dollar funds necessary to meet its continuing needs, which can be exemplified in the proposed construction of a nuclear reactor generating plant; and that the foreign policy of the United States, embodied in its foreign aid program, is to assist the Philippines and stimulate American investment in that country.

5. POSITION OF THE SECURITIES AND EXCHANGE COMMISSION

The Commission presented lengthy testimony on the operations of the divorcement and integration provisions of the Holding Company Act, all in support of the divestment by General Public Utilities of its interest in Manila Electric. As the Commission itself stated, however:

> The importance to United States foreign policy of having an American corporate entity overseeing the management of the Philippine subsidiaries, and the significance of a possible nuclear reactor project to the United States foreign policy, are matters within the special competence of other Government departments and agencies.

6. CONCLUSION

While the Commission has suggested that these objectives which are without the competence of its jurisdiction, as well as the purposes of the Utility Act, might be met by the stock of Manila being transferred to a newly created American holding company, and the stock of that company in turn distributed to the stockholders of General Public

Utilities, we do not find on the record that this will assure to the degree of satisfaction necessary, the attainment of the objectives of rendering the maximum financial and managerial assistance possible to this highly important utility in the Philippines, with which country we have been and are bound with such ties of friendship and amity and which appears to favor continued ownership of the Manila Electric Co. by the General Public Utilities Corp.

The committee is opposed to legislation which would amend the Public Utility Holding Company Act of 1935 and which would be construed as a precedent for opening up that act to exceptions in other situations. The committee believes that enactment of H. R. 10624 is desirable under the special circumstances which prevail in this particular situation and the committee, accordingly, recommends early action on this legislation.

The reports submitted by the departments of the Government which have been requested to comment on H. R. 10624 are as follows:

DEPARTMENT OF STATE,
Washington, May 9, 1956.

Hon. J. PERCY PRIEST,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. PRIEST: In response to your request of April 19, 1956, requesting a report on H. R. 10624, relating to intercorporate relations between the General Public Utilities Corp., a corporation organized and operating in the United States, and the Manila Electric Co., the Department of State wishes to indicate that it is in sympathy with the object of the proposed legislation, which appears to be entirely consistent with United States foreign policy objectives.

The performance of the Manila Electric Co. under its present ownership apparently has been a very creditable one, particularly in its efforts, since the end of World War II, to expand its services to meet the rapidly growing demand for electric power in the area which it serves in the Philippines. Representatives of the General Public Utilities Corp. in conversations with departmental officers have indicated that the corporation is seriously considering the use of an atomic reactor for future power production in the Philippines. Continued performance of this type by American-owned firms advances the foreign economic policy of the United States by giving practical demonstration to foreign countries of the advantages which accrue to such countries through the investment of American capital.

The Department has been informed that the Philippine Government desires to see the General Public Utilities Corp. continue to maintain ownership of the Manila Electric Co. as it considers a sale of the latter company may well be detrimental to the Philippine economy.

Of course you understand the Department is only commenting on the foreign-policy aspects of the proposed legislation and cannot speak for other executive branch agencies concerning possible domestic considerations.

The Department has been informed by the Bureau of the Budge that there is no objection to the submission of this report.

Sincerely yours,

ROBERT C. HILL,
Assistant Secretary
(For the Secretary of State).

INTERNATIONAL COOPERATION ADMINISTRATION,
OFFICE OF THE DIRECTOR,
Washington, D. C., May 10, 1956.

Hon. J. PERCY PRIEST,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: In connection with your request of April 19, 1956, the International Cooperation Administration has been advised by the Department of State that H. R. 10624, relating to intercorporate relations between the General Public Utilities Corp., a corporation organized and operating in the United States, and the Manila Electric Co., appears to be consistent with United States foreign policy objectives. Accordingly, the International Cooperation Administration has no objection to the enactment into law of H. R. 10624, and believes such enactment would be in conformity with the objectives of the Mutual Security Act of 1954, as amended.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Yours very sincerely,

JOHN B. HOLLISTER.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D. C., May 10, 1956.

Hon. J. PERCY PRIEST,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in reply to your letter of April 19, 1956, requesting the views of this office with respect to H. R. 10624, a bill relating to intercorporate relations between the General Public Utilities Corp., a corporation organized and operating in the United States, and the Manila Electric Co.

If the Congress believes that H. R. 10624 is in the public interest, the Bureau of the Budget would have no objection to its enactment.

Sincerely yours,

———— ————, *Assistant Director.*

MEMORANDUM OF THE SECURITIES AND EXCHANGE COMMISSION WITH RESPECT TO H. R. 10624. (84TH CONGRESS, 2D SESS.)

INTRODUCTION

The Commission opposes enactment of H. R. 10624 because it will permit General Public Utilities Corp. (GPU) to retain its Philippine subsidiaries in addition to its integrated domestic electric utility system. This would be inconsistent with the principles stated by the Congress in the Public Utility Holding Company Act of 1935 and the Commission has not been presented with any considerations which would justify departing from those principles in this particular situation. It is the Commission's opinion that the reasonable needs of all persons and interests concerned can be well served by divestment from GPU of its Philippine properties in an appropriate manner.

On May 2, 1955, the Commission submitted to the House Committee on Interstate and Foreign Commerce its comments on H. R. 4370, 84th Congress, which would have the same effect as the present H. R. 10624; namely, to permit GPU to retain its two Philippine subsidiaries, Manila Electric Co. (Manila), and Escudero Electric Service Co. (Escudero), despite an order of this Commission under the Public Utility Holding Company Act requiring that the properties be divested. Those comments contained an analysis of the legal, financial, and historical aspects of the situation and had appended certain financial tables for further information. We assume that those comments with appendices are available to the committee.

The Commission concluded its 1955 comments by stating that it neither supported nor opposed the bill (H. R. 4370) but called to the committee's attention five considerations which it believed to be of major importance. Further consideration has persuaded the Commission that all reasonable objectives asserted by GPU for that bill as well as for the present bill can be as well achieved by a suitable plan of divestment. This would avoid the evils found by the Congress to flow from combining noncontiguous foreign-utility properties under the same corporate ownership as domestic properties.

We refer to the asserted foreign-relations objective, suggested by GPU, of preserving GPU's ownership which is claimed to be efficient in its operation and to have acquired substantial good will in the Philippines. We also refer to the possibility, suggested by GPU, that a nuclear powerplant, if economically feasible, might be constructed in Manila. The importance to United States foreign policy of having an American corporate entity overseeing the management of the Philippine subsidiaries, and the significance of a possible nuclear power project to United States foreign affairs, are matters within the special competence of other Government departments and agencies, but it seems clear to us that whatever importance they may have need not be sacrificed by compliance with the Commission's divestment order under the standards of the Public Utility Holding Company Act.

As appears more fully below, divestment through creation of a domestic holding company to hold the Manila and Escudero stock, followed by an orderly distribution of that holding company's stock to GPU's stockholders, will satisfy whatever foreign affairs interest the United States has in the matter while preserving the interests of American investors and complying with the principles and standards of the Public Utility Holding Company Act. These principles embody the proposition that domestic security holders, consumers, and the public interest generally are harmed when securities combine an equity interest in a domestic utility system with a financial interest in foreign properties and when management is diverted by the problems of foreign properties from full attention to the domestic region for whose power needs it is responsible.

Such a method of divestment would also protect against GPU's claim that control of the Philippine properties might fall into the hands of irresponsible persons, and would enable the operating management to remain intact. The nuclear power project at this time is uncertain. Since GPU is proposing a commercially feasible project, it would appear that this project could as well go forward through a separate and independent American holding company.

With the possibility of this type of divestment in mind the Commission sees no contradiction between the interests of GPU's stockholders and consumers, the interests of foreign policy and our relations with nations of the Far East, and the public interest and the interests of investors and consumers as embodied in the Public Utility Holding Company Act of 1935. In the analysis which follows we have largely restated our remarks of May 2, 1955, with emphasis upon the possibilities of meeting all reasonable objectives without enactment of the Bill and the evils which this would perpetuate.

ANALYSIS

The present bill, H. R. 10624, provides:

"That no law of the United States shall be held to require, or to authorize any department or independent agency of the Government to require, the General Public Utilities Corporation, a corporation organized and operating in the United States, to divest itself of control of, or any interest in, the Manila Electric Company, which produces and distributes electricity in and around the City of Manila in the Republic of the Philippines."

The bill represents special legislation to exempt GPU from one of the provisions of the Public Utility Holding Company Act of 1935. The principal integrated public-utility system of GPU, a registered holding company, is in New Jersey and Pennsylvania. As stated, it also has two public-utility subsidiaries in the Philippines; namely, Manila and Escudero. GPU has applied to the Philippine authorities for approval of a merger of Escudero into Manila. If H. R. 10624 should be enacted, GPU would be the only registered holding company having a retainable public-utility system within the United States and at the same time a retainable additional public-utility system outside the United States and not contiguous to its United States system.

In adopting the act, Congress provided that generally speaking a registered holding company should be limited in its operations to a single integrated public utility system, as that term is defined in section 2 (a) (29), except under the unusual circumstances set forth in the proviso section 11 (b) (1) reads as follows:

"* * * *Provided, however,* That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

"(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company or such system;

"(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

"(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation."

Whether or not GPU could meet the requirements of clauses (A) and (C) with regard to its Philippine properties, it concedes that it

cannot meet clause (B) and that the Commission's divestment order is lawful.

A preliminary draft of section 11 of the act contained a provision that the Commission could not require divestment of interests outside the United States (see H. Rept. 1318, 74th Cong., 1st sess., pp. 6, 17). This, however, was ultimately eliminated, and the bill as finally enacted embodied the principle that a holding company should "* * * control the management of only a single system of operating companies, which single system is not mixed up with any extraneous businesses such as * * * operations in foreign countries * * *" (S. Rept. 621, 74th Cong., 1st sess., p. 11).

Under the exemption provisions contained in section 3 (a) of the act, Congress permitted the Commission to grant a holding company an exemption from the substantive provisions of the act, including section 11 (b) (1), if, under paragraph 5 of section 3 (a), the holding company did not derive any material part of its income from domestic public-utility subsidiaries. The intent of that subsection was to permit the Commission to grant an exemption to a holding company which holds securities of public-utility companies operating outside the United States if the holding company does not, in addition, control substantial public-utility companies operating within the United States. The statement of the managers on the part of the House (Congressmen Rayburn, Huddleston, and Lea) contained in the conference report upon the act (H. Rept. 1903, 74th Cong., 1st sess.) stated, at page 70, with respect to section 3 (a) (5), that its purpose was to allow exceptions "* * * in the case of a holding company whose interests are essentially foreign."

The history of the posture in which GPU now finds itself with respect to the Philippine properties under the mandate of section 11 (b) (1) commenced in 1941. In that year, at a time when Associated Gas & Electric Corp. (Agecorp) and its parent, Associated Gas & Electric Co. (predecessors of GPU), were undergoing reorganization pursuant to chapter X of the Bankruptcy Act, the Commission instituted a proceeding directed to the then chapter X trustees of Agecorp in which it was alleged that the then holding company system held a large number of companies scattered throughout this country and in the Philippine Islands which were not retainable under the standards of section 11 (b) (1). After hearing, the Commission, on August 13, 1942, issued an order in which, among other things, the system was ordered to sever its relationship with a large number of companies, including the two public-utility companies operating in the Philippine Islands (*Denis J. Driscoll and Willard L. Thorp, etc.*, 11 S. E. C. 1115; 11 S. E. C. 1123).

Thereafter, on February 9, 1945, the two Philippine companies were removed from the list of companies required to be divested. The order of removal was entered upon the application of the trustees of Agecorp who stated that the properties of the two Philippine companies were then in the hands of the Japanese and that, after the Japanese had been driven out of the Philippine Islands, it would be necessary that substantial funds be expended to rehabilitate the properties; and that, while the Philippine companies did not have sufficient funds to undertake such a program on their own, their parent holding company, Associated Electric Co., an American company and a direct subsidiary of Agecorp, was in a position to

advance very substantial sums to provide the necessary funds. Under these circumstances, the Commission removed the two Philippine companies from the list of companies required to be divested subject "to the condition that [the 1942] order directing the divestment of the Philippine properties [might] be reinstated upon notice and opportunity for hearing on the sole question of the appropriateness of the time of such reinstatement in relation to the status of the rehabilitation program" (*Denis J. Driscoll and Willard L. Thorp, etc.*, 18 S. E. C. 283).

Subsequently, the Commission reconvened the proceeding and, after hearing, on December 28, 1951, reinstated the divestment order so far as the Philippine properties were concerned (*General Public Utilities Corporation*, Holding Company Act Release No. 10982). Under the standards of section 11 (c) of the act, GPU was required to comply with the divestment order within 1 year from December 28, 1951. Since the divestment has not as yet been effected, the company has been in default with respect to the order for nearly 3½ years.

On February 24, 1955, there was introduced H. R. 4370 (84th Cong., 1st sess.), which proposed to amend section 11 (b) (1) of the act by adding a proviso thereto which would have had the same effect as the present bill. The Commission on May 2, 1955, submitted its comments on that bill. No hearings have been held.

The Commission on March 6, 1956, notified GPU that unless GPU filed a plan for divestment of its Philippine subsidiaries within 60 days, the Commission would consider appropriate enforcement action. The company by letter dated April 23, 1956, referred to the present bill which had been introduced on April 18, 1956, and indicated that it did not intend to comply with the order. Copies of both letters are attached.

Between March 1, 1945, and December 31, 1946, Associated Electric Co. (Aelec), the intermediate holding company, advanced to or for the account of the Philippine companies $2,698,116, but no further investment of new moneys has been made by the GPU system in the Philippine properties since December 31, 1946. The payment of interest and dividends was resumed by Manila in the latter part of 1950, such payments having been stopped when war broke out late in 1941. Since their resumption, and through December 31, 1955, Manila has distributed to its parent, Aelec, an aggregate of $25,265,000 of income, consisting of $2,277,500 of interest payments, $1,312,500 of preferred stock dividends, and $21,675,000 of common stock dividends. In addition, from 1947 to 1955, inclusive, Escudero has paid $100,000 in common stock dividends to its parent, Aelec. Any funds needed by the Philippine companies, in addition to funds provided from depreciation accruals and other noncash items, have been obtained from retained earnings ($18,747,345 to December 31, 1955) and the sale of securities within the Philippine Islands ($8 million to December 31, 1955).

It is to be noted that the United States and Philippine income taxes and Philippine exchange taxes and related charges recorded by Aelec on the above income from its Philippine subsidiaries aggregated approximately $14,204,000, leaving a net balance of distributed Philippine income of approximately $11,161,000 applicable to the stock of GPU. Aelec currently pays a United States income tax on its Philippine income computed at the corporate rate of 52 percent

(after first deducting from such income certain Philippine remittance charges [1]) against which computed income tax it is entitled to a direct credit for Philippine income taxes levied on income distributions from the Philippine companies to it.

GPU has represented that it has attempted from time to time to sell its investment in the Philippine properties to potential investors both within and without the United States but that such attempts have not been successful. It has advised further that it does not believe a sale of the common stock of the two Philippine companies within the United States by means of an underwriting and public offering to be feasible in view of the large amount involved (estimated by GPU at from $30 million to $35 million) and the limited market for such a security. GPU's position is that neither a public offering of the common stock of the Philippine companies nor a direct distribution thereof in kind to the common stockholders of GPU would be in the best interests of the stockholders of GPU because they would each result in scatteration of such stock among many security holders in the United States, which in turn might result in control of the Philippine companies falling into the hands of persons interested only in exploiting the companies and not in maintaining their properties and rendering good electric service in the areas where they serve. Moreover, GPU states that either a public offering or distribution in kind would leave no single entity in the United States with any duty of protecting the interests of the American investors in the Philippine companies.

Our Division of Corporate Regulation has discussed with GPU an alternative type of divestment which would not result in the scatteration of the shares of the Philippine companies among investors in the United States. Aelec, the intermediate holding company between the Philippine subsidiaries and GPU, is now in the process of liquidation and dissolution and may well be dissolved by the time these comments are received by the committee.[2] Its assets, including all of the common stock, all of the preferred stock, and certain of the debentures of the Philippine companies, are being transferred to GPU. Accordingly, another holding company could readily be formed in the United States by GPU to hold the common stock and the other securities of the Philippine companies. In such event, the stock of the new American holding company could be distributed to GPU's stockholders. This would effect compliance with the Commission's divestment order and there would still be an American holding company which could look out for the interests of American investors. Such American holding company would be in a position to negotiate, as GPU does at present, with the Department of Defense with respect to any national-defense requirements of the United States insofar as the operations of the two Philippine public-utility companies pertain to such requirements.

The management of such American holding company, which should be no less able and resourceful than the present GPU management, would direct its energies, resources, and skills exclusively to developing and encouraging the growth of the Philippine properties in a manner consistent with the interests of the United States and the interests of

[1] Prior to January 1, 1956, there was also deducted a Philippine exchange tax on dollar remittances. This tax was eliminated as of that date.

[2] On March 2, 1956, the Commission approved the dissolution of Aelec and the acquisition of its assets by GPU. General Public Utilities Corporation, Holding Company Act Release No. 13117.

the Philippine consumers and its investors most of whom will be Americans. In the event new equity capital or financial backing for the purchase of electric generating units and boiler equipment in the United States, or engineering know-how are required by the Philippine companies, the American holding company should be able to furnish the required financial assistance through its access to the American capital markets or lending institutions or to supply the required engineering assistance as the result of contacts established with nationally known engineering firms.

GPU has advised our Division of Corporate Regulation that it opposes such a divestment program since it believes that many of its large corporate stockholders would either not be permitted, under the laws of the various States in which they are incorporated, or would not desire, to retain the stock of a holding company which holds securities of only foreign public-utility companies. Under these circumstances, GPU purports to be fearful that large blocks of the stock of the holding company would be forced upon the market, thereby depressing the market price of that stock, and that this would not be in the interest of GPU's stockholders. This fear, in the Commission's opinion, is unwarranted since the large corporate holders of GPU stock, if they should desire to dispose of their holdings of a company owning only foreign public-utility companies, could do so in an orderly manner without causing any adverse effect on the market price of the securities. Indeed, to permit a wholesome distribution of the stock of the American holding company, and to enable the company to obtain suitable management and to organize and undertake an appropriate course of action, the distribution by GPU to its stockholders of the stock of the American holding company could be consummated through several partial distributions. The Commission and its staff would, of course, be available for advice and assistance to GPU in complying with the divestment order in a reasonable and practicable manner consistent with the standards of the act.

The argument advanced by GPU regarding the adverse effect of unloading large blocks of such holdings is the same argument originally advanced by opponents of the act that compliance with its integration and simplification objectives would result in dumping or forced liquidation of securities which, in turn, would demoralize the utilities market. This argument was specifically rejected by the Senate Committee on Interstate Commerce in its favorable report on the holding-company bill.[3] And in this Commission's report to a subcommittee of this committee, dated October 15, 1951, it was pointed out that such fears turned out to be wholly unwarranted.[4] Moreover, such large corporate holders have long been aware that, under the Act, GPU could not retain its interests in the Philippine subsidiaries, and any purchases they made of GPU stock were made with that knowledge.

GPU's contention that ownership of foreign securities is incompatible with the investment policies of many of its large corporate holders does not appear consistent with GPU's own desire for retention. Apart from possible laws or regulations governing the portfolios of certain types of investors, arguments against the holding of Manila stock by institutional stockholders, either directly or through an

[3] S. Rept. 621 (74th Cong., 1st sess.) on S. 2796, p. 16.
[4] Report for the SEC Subcommittee of the House Committee on Interstate and Foreign Commerce on the Public Utility Holding Company Act, pp. 71–83.

American holding company, should apply with equal force to GPU itself.

Compliance by GPU with the Commission's divestment order should be beneficial to the stockholders of GPU. It will give them for the first time in the history of the company a management which will devote its time and energies solely to looking after the company's domestic utility interests in the States of Pennsylvania and New Jersey where its principal integrated system operates. It also goes without saying that the management of GPU will be relieved of the necessity of making periodic trips to the Philippines to look after GPU's interests there.

No longer, too, will the earnings and dividends on the stock of GPU, as well as the assets underlying such stock, rest upon a combination of utility enterprises in the United States and utility enterprises in the Far East. As we pointed out previously, for the 9-year period from 1941, when the Philippine Islands were seized by the Japanese, until 1950, GPU received virtually no income from its Philippine subsidiaries.

GPU has attempted to create the impression that by the divestment of the Philippine subsidiaries from GPU control, the stockholders of GPU will suffer a severe loss. There is no reason why divestment through distribution should cause a loss, and the experience of registered systems generally in complying with divestment orders has been to the contrary. After the consummation of the divestment, each GPU stockholder will continue to retain his precise share in the present GPU enterprise except that instead of having only stock of GPU as it is now constituted, he will have stock of the reconstituted GPU and also stock of the spun-off Philippine companies—the latter probably through the medium of the stock of a new American holding company. Actually he may have gained an advantage If he is interested in a domestic utility security, he can keep the stock of the reconstituted GPU and sell the stock of the spun-off company, and vice versa, or he can keep them both.

CONCLUSION

Notwithstanding the arguments raised in favor of H. R. 10624, the Commission believes that enactment of the bill will be detrimental to GPU's stockholders, the public interest, and the interest of consumers. The Commission directs the attention of the committee to the following considerations with respect to which it believes the committee should be fully apprised before taking action upon this bill:

(1) The bill represents special legislation designed to accommodate a particular registered holding company with respect to a particular problem which existed before the act was adopted and which continues to represent a substantial problem in connection with its divestiture program as ordered by this Commission under section 11 of the act.

(2) The relief sought by GPU by means of this bill was covered by proposals made to the Congress which enacted the Holding Company Act in 1935 and was specifically rejected.

(3) The bill represents an effort by GPU to obtain congressional nullification of this Commission's section 11 (b) (1) order of 1942 directing GPU, among other things, to divest itself of its Philippine

subsidiaries, an order with respect to which GPU has been in default for a period of nearly 3½ years.

(4) The bill would authorize GPU to pursue a course of conduct different from those believed by this Commission to be presently available to GPU to bring itself into compliance with the section 11 (b) (1) order.

(5) The Commission believes that the interests of the United States Government and the interests of American investors will be better served if there is a single holding company whose time and energies are devoted solely to looking after its Philippine interests without involvement with domestic problems and which will be in a position to negotiate with the United States Department of Defense with respect to national-defense requirements.

SECURITIES AND EXCHANGE COMMISSION,
DIVISION OF CORPORATE REGULATION,
Washington, D. C., March 6, 1956.

Re General Public Utilities Corp., file No. 59–32–3

Mr. ALBERT F. TEGEN,
President, General Public Utilities Corporation,
New York, N. Y.

DEAR MR. TEGEN: As you know, on August 13, 1942, pursuant to the provisions of section 11(b)(1) of the Public Utility Holding Company Act of 1935, the Commission ordered the predecessors of General Public Utilities Corp., to dispose of, among other things, their interest in Manila Electric Co. and Escudero Electric Service Co. Subsequently, on February 9, 1945, these two Philippine companies were removed from the list of companies required to be disposed of by the order of August 13, 1942. Thereafter, on December 28, 1951, the Commission annulled and canceled the order of February 9, 1945, and reinstated the order of August 13, 1942, requiring GPU to dispose of all its interest in the two Philippine companies.

A period of more than 4 years has elapsed since the entry of the order of December 28, 1951, and GPU has not as yet complied with that divestment order. Accordingly, the Commission has directed me to advise you that, unless GPU files with the Commission, not later than 60 days from the date of this letter, a plan providing for the prompt disposition of GPU's interest in the two Philippine subsidiaries, the Commission will consider taking appropriate action to enforce compliance with its divestment order.

Very truly yours,

RAY GARRETT, Jr., *Director.*

GENERAL PUBLIC UTILITIES CORP.,
AND SUBSIDIARY ELECTRIC POWER COMPANIES,
New York, N. Y., April 23, 1956.

Re General Public Utilities Corp., file 59-32-3

Mr. RAY GARRETT, Jr.,
Director, Securities and Exchange Commission,
Division of Corporate Regulation, Washington, D. C.

DEAR MR. GARRETT: Reference is made to your letter of March 6, 1956, relating to Manila Electric Co. and Escudero Electric Service Co., previous acknowledgment of which was made on March 9.

As you know, since February 1955, legislation which would permit the retention by General Public Utilities Corp. of its interest in its Philippine subsidiaries has been pending before the present Congress. Several months ago we were advised by the Director of the Bureau of the Budget that there was general agreement in the executive branch of the Government as to the desirability of the objectives of such legislation, if these objectives could be achieved by a bill appropriately confined in its application to the unique situation here presented. Efforts in this connection have been continuing and, on April 18, 1956, there was introduced in the House of Representatives a bill of this nature. For your possible convenience, a copy of the bill (H. R. 10624) is enclosed. We have been advised that the House Committee on Interstate and Foreign Commerce plans to schedule a hearing on this bill at an early date.

We believe that the enactment of such legislation would give recognition to the basic interest of the United States in the welfare of the Philippines and to the present and prior position of the United States in the sponsoring of American private investment in the Philippines. In this connection, we have been advised that the Philippine Government favors our retention of our investment in our Philippine subsidiaries. We believe that there is no practicable way for us to dispose of such investment which would not be directly contrary to these national interests and to the best interests of our stockholders.

Very truly yours,

A. F. TEGEN, *President.*

○